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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,708	03/01/2006	Arnaud Helie	Q92887	8999
23373 7590 09/05/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER MCGRAW, TREVOR EDWIN				
ART UNIT		PAPER NUMBER		
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09/05/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,708

Applicant(s)

HELIE ET AL.

Examiner

Trevor E. McGraw

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 27 May 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

Drawings

The drawings were received on 05/27/2008. Figure 2 is acceptable. Figure 4 is not acceptable (see specification below).

Specification

The amendment filed 05/27/2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Newly added Figure 4 was not with the originally filed specification and is not afforded incorporation into the present specification and introduces new matter for limitations that were poorly disclosed.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8, 10, 11, 12, 13, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Garrigou (US 3,625,437).

In regard to Claims 1, 8, 10, 11 and 12, Garrigou (3,625,437) teaches a fluid dispenser device that includes a fluid spray head **that is coupled to a dispensing member is** manufactured from a common mold (Column 1, Lines 30-68) where the spray head (2) has an expulsion channel (13) with a spray orifice (14) and a spray profile (15,16,17) are formed in an end wall of the spray head (2) where non radial spray channels (17) are formed to the swirling chamber (Column 3, line 46-55) which opens to a spray chamber (16) that is disposed upstream of the spray orifice (14) where an insert (9) **forms an internal nozzle (see Figure 1 and 3 where 14 sits over 9 to form internal nozzle within the insert and forms a base surface for the spray profile.**

The internal nozzle that is created is configured along with the spray head with an upstream opening in the spray head) and is introduced through the inside of the spray head (2) being disposed in the expulsion channel (13) so as to form a cover for the spray profile (15,16,17) where the central axis (X) of the insert (9) is substantially identical to the central axis (Y) of the expulsion channel (13) (Figure 4) and where the expulsion channel (13) further has a centering means (19) for centering the insert (9) within the spray head (2) that is located in the expulsion channel (13) for centering the insert (9) where the centering means (19) is in close proximity to the spray profile (15,16,17) and **the central spray chamber (16) is between the spray orifice (14) of the spray head (2) and the insert (9).**

In regard to Claim 2, 13 and 14, Garrigou also teaches where the centering means (19) has at least one projection (see plurality of centering means 19 in Figure 4) that totals 4 projections which inherently includes more than 3 and less than 3 projections where the diameter of the inscribed circle (see Figure 4) defined by the projections (19-centering means) is substantially identical to the diameter of the insert (9) where the projections extend from an inside wall of the expulsion channel (13) and abut the insert (9) to substantially align the central axis of the insert (9) with the central axis of the expulsion channel (13).

In regard to Claim 4 and 16, Garrigou further teaches where the accesses of the expulsion channel (13) of the feed channel (17) are formed between the projections (Centering means projections 19-Figure 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 5-7, 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrigou (US 3,625,437) in view of Ennis, III (US 4,923,448).

In regard to claim 3 and 15, Garrigou as taught and described above teaches the claimed invention except for the expulsion channel (13) having three flat surfaces that

are symmetrically arranged about the expulsion channel (13) where the flat surfaces cooperate with the insert (9) to center the insert (9) relative to the expulsion channel (13). Ennis, III (4,923,448) teaches that it is known to have an expulsion channel (52) that includes at least 3 flat surfaces (64) that are symmetrically placed about the expulsion channel (13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the flat surfaces (64) of the expulsion channel (52) as taught by Ennis, III to the expulsion channel (13) of Garrigou, in order to provide for a non cylindrical means for centering the insert (9) about the expulsion channel (13) so as to offer better tolerance control in offsetting the insert from the expulsion channel for minimizing the amount of space that a fluid can travel for atomization of spray with directional control through the spray openings.

In regard to claims 5-7, 9, Garrigou as taught above discloses the claimed invention except for the following: a central axis of the insert (9) being offset from the central axis of the expulsion channel (13) by a distance of less than 0.08 mm, and preferably less than 0.03 mm; a spray chamber having a diameter of 1 mm; a spray orifice having a diameter of 0.3 mm; and the standard deviation of the offset between the central axis of the insert relative to the central axis of the expulsion channel being less than 0.05 mm and preferably less than 0.02 mm. It would have been an obvious matter of design choice to offset the central axis of the insert (9) from the central axis of the expulsion channel (13) by a distance of less than 0.08 mm, and preferably less than 0.03 mm as applicant has not disclosed that offsetting the central axis of the insert (9) from the central axis of the expulsion channel (13) by a distance of less than 0.08 mm,

and preferably less than 0.03 mm solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the central axis' not being offset from one another where offsetting the central axis' would provide a benefit that would ensure a spray would be directed past the projections through the expulsion channel.

It would have also been an obvious matter of design choice to provide for a spray chamber having a diameter of 1 mm and a spray orifice having a diameter of 0.3 mm as providing for such dimensions of the spray chamber and spray orifice as claimed are not disclosed by applicant so as to solve any stated problem or is for any particular purpose and appear that the invention would perform equally well if the dimensions of the spray chamber of 1 mm and the spray orifice of 0.3 mm were larger where the sizing of such benefits in atomization of a spray fluid through the restricted opening for directing the fluid.

It would have been a further obvious matter of design choice to provide for a standard deviation of less than 0.05 mm and preferably less than 0.02 mm for the offset between the central axis of the insert relative to the central axis of the expulsion channel since applicant has not disclosed that providing for a standard deviation of less than 0.05 mm and preferably less than 0.02 mm for the offset between the central axis of the insert relative to the central axis of the expulsion channel solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well without an offset between the insert and expulsion channel where offsetting the central

axis' would provide a benefit that would ensure a spray would be directed past the projections through the expulsion channel.

Response to Arguments

Objection to Drawings

The drawings were received on 05/27/2008. These drawings are acceptable in view of the prior art designation for Figure 2.

Objection to Specification

Applicant's arguments filed 05/27/2008 have been fully considered but they are not persuasive. Examiner makes note to Applicant that the amended subject matter pointed to in paragraphs 2 and 22 do not provide antecedent basis for the claimed subject matter in Claims 1 and 11. Examiner maintains this objection as Applicant has no right to the included subject matter, which is not implied by description at all.

Rejection under 35 USC § 112

Applicant's arguments filed 05/27/2008 have been fully considered but they are not persuasive. Examiner maintains the rejection of 35 USC § 112 First Paragraph in view of Applicant's newly added Figure 4. Examiner's position is considered to be clear.

Rejection under 35 USC § 102

Applicant's arguments filed 05/27/2008 have been fully considered but they are not persuasive. Applicant assertion that the insert (9) of Garrigou is not an internal nozzle is unfounded. A viewing of Figure 1, 2 and 4 clearly depict the insert (9) being internal and bounded by the spray head (2). The expulsion pressure that develops during actuation does not subject the insert (9) from being projected out of the spray head. The insert of Garrigou is not at further risk of expulsion due to being retained by the end wall of the spray head's end wall. The spray head (2) and insert (9) are also shown in Garrigou (see Figures 1 and 2) as separate elements and the spray orifice is in the spray head. Thus, Applicant's arguments are refuted in view of the revised office action (see above). Examiner maintains the rejection to Claims 1, 2, 4, 8, 10-14 and 16 held under 35 USC § 102 (b) to Garrigou (US 3,625,437).

Rejection under 35 USC § 103

Applicant's arguments filed 02/08/2007 have been fully considered but they are not persuasive. In view of the rejection of 35 USC § 102 (b), Examiner maintains the rejection of Claims 3, 5-7, 9 and 15.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trevor McGraw whose telephone number is (571) 272-7375. The examiner can normally be reached on Monday-Friday (2nd & 4th Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571) 272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. E. M./

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Art Unit: 3752

Examiner, Art Unit 3752

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752